



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Twenty Sixth day of March Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.1126 of 2021
in
Crl.A.(MD)No.330 of 2019

BALAMURUGAN

... PETITIONER/ APPELLANT

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
SETHUBACACHATHIRAM POLICE STATION,
THANJAVUR DISTRICT.
CRIME NO.257/2003.

... RESPONDENT/ RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence in Crl.A.No.330/2019 in S.C.No.260/2013 dated 28.06.2019 by the III Additional District Sessions Judge, Pattukottai and enlarge the petitioner on bail pending disposal of the above appeal.

Prayer in Crl.A.(MD)No.330 of 2019:

To set aside the conviction and sentence imposed on the appellant by the III Additional District Sessions Judge, Pattukottai, Thanjavur District in S.C.No.260 of 2013 dated 28.06.2013 acquit the appellant.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.T.SEKAR, Advocate for the petitioner and of Mr.R.ANANDHARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

[Order of the Court was made by **K.KALYANASUNDARAM, J.**]

The petitioner, who was arrayed as A1 in S.C.No.260 of 2013, was tried by the III Additional District Sessions Judge, Pattukottai for the offence punishable under Sections 341 and 302 of IPC and he was found guilty and sentenced to undergo Life Imprisonment and also



imposed a fine of Rs.5,000/- for an offence under Section 302 of IPC and further imposed a fine of Rs.500/- in default to undergo one week simple imprisonment for an offence under Section 341 of IPC. Aggrieved over the conviction and sentence, the present appeal has been filed. Pending appeal, he seeks suspension of sentence.

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2. The case of the prosecution is that the deceased Pitchai @ Pitchaiyan is the father-in-law of the petitioner. The petitioner's sister Seethaiyammal married the deceased son Raja. Due to family dispute, the petitioner is said to have bite the deceased. Thereafter, on the next day morning at 5.00 a.m., when the deceased was near Munikovil, the petitioner along with his father and brothers, who have been arrayed as A2 to A4 respectively, waylaid the deceased and A1 with knife, A2 armed with wooden log, A3 with knife and A4 with aruval attacked the deceased and caused his death.

3. Mr.T.Sekar, learned counsel appearing for the petitioner would argue that totally there are four accused in this case and in respect of the petitioner, case was split up and the other three accused faced trial. The learned Sessions Judge, Fast Track Court No.II, Pattukottai in S.C.No.192 of 2005 acquitted the second accused while convicting the accused Nos.3 & 4 under Section 324 of IPC. Challenging the acquittal of A2, P.W.2 filed Crl.R.C.No.817 of 2006. The convicted accused Nos.3 & 4 preferred an appeal in C.A.No.428 of 2006. It is the submission of the learned counsel for the petitioner that by order dated 28.04.2018 this Court dismissed the Crl.R.C.No.817 of 2006 while allowing the criminal appeal in C.A.No.428 of 2006 by which the appellate Court acquitted A3 & A4.

4. It is further submitted that the occurrence had taken place in the year 2003 and a final report was filed in the year 2004. In the meanwhile, the petitioner has gone to abroad for employment and when he came back, the trial Court disposed of the case. Since the appeal and the revision were pending before the High Court, the case against the petitioner could not be proceeded with. It is further contended that the petitioner is alleged to have attacked the deceased with knife, but the doctor, who had conducted post mortem, found only cut injuries and only on that basis, A3 and A4 were acquitted and hence, the petitioner is entitled to suspension of sentence.

5. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, appearing for the State, vehemently opposed the bail petition contending that P.Ws.1 to 4 are eye witnesses to the incident. Though P.W.2 turned hostile, the case of the prosecution was supported by the evidence of P.Ws.1,3 & 4. The Trial Court on proper appreciation of evidence, came to the conclusion that the charge against the petitioner has been proved and hence, he is not entitled for suspension of sentence.



6. Heard Mr.T.Sekar, learned counsel appearing for the petitioner and Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

7. In the matter on hand, it is not in dispute that final report was filed against four accused. Since the petitioner was not available for trial, the case against him was split-up and other three accused faced the trial as stated supra. The trial Court acquitted the second accused and convicted the accused Nos.3 & 4 under Section 324 of IPC. It is also relevant to note that though two of the witnesses sustained injury, but they were not examined as one of the injured witness died pending trial and another witness was in abroad. We have gone through the findings given in the Criminal Revision Petition and the appeal preferred by the P.W.2 and A3 & A4, it could be seen that the convicted accused were acquitted mainly on the ground of suspicion.

8. In the light of the above facts, we are inclined to grant an order in favour of the petitioner. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner is suspended, subject to the following conditions:

i. The petitioner is directed to be enlarged on bail on executing a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate, Pattukottai.

ii. The petitioner shall report before the learned Judicial Magistrate, Pattukottai on the first working day of every month at 10.30 a.m., until further orders.

iii. On any particular date, if the petitioner is not able to appear, leave is granted to the petitioner to file an application under Section 317 Cr.P.C. and appear before the said Court on any other day, as determined by the concerned Court, in lieu of the day on which they would absent.

sd/-
26/03/2021

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/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, the responsibility of the advocate/litigant concerned.

<https://hcservices.echmra.gov.in/hcservices>



TO

1 THE III ADDITIONAL DISTRICT SESSIONS JUDGE,
PATTUKOTTAI, THANJAVUR DISTRICT.

2 THE JUDICIAL MAGISTRATE, PATTUKOTTAI.

3 DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR DISTRICT AT KUMBAKONAM.

4 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.

5 THE INSPECTOR OF POLICE
SETHUBACACHATHIRAM POLICE STATION,
THANJAVUR DISTRICT.

6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.T.SEKAR, Advocate (SR-2623[I] dated 26/03/2021)

ORDER

IN

CRL MP(MD) No.1126 of 2021

IN Cr1.A.(MD)No.330 of 2019

Date :26/03/2021

AM

MS/VR/SAR-4/01.04.2021/4P.7C